

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING )  
 PHARMACY, INC. PRODUCTS LIABILITY )  
 LITIGATION )  
 ) MDL No. 13-2419  
 ) Dkt. No 1:13-md-2419 (RWZ)  
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 THIS DOCUMENT RELATES TO: )  
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 All Cases Against the Saint Thomas )  
 Entities )  
 )  
 )

**SAINT THOMAS ENTITIES' GLOBAL MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON PUTATIVE CLAIMS FOR ACTUAL AGENCY AND DIRECT  
LIABILITY**

Pursuant to Federal Rule of Civil Procedure 56, the Saint Thomas Entities<sup>1</sup> file this Global Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability as to the MDL Plaintiffs bringing claims against them (“Tennessee Plaintiffs”). The Tennessee Plaintiffs have no evidence to support their assertion that the Saint Thomas Entities directed, exercised control over, or otherwise authorized the Saint Thomas Outpatient Neurosurgical Center (“STOPNC”) or the other STOPNC Defendants<sup>2</sup> to act as their agent with respect to any of the actions giving rise to the claims by the Tennessee Plaintiffs against the Saint Thomas Entities. Accordingly, the Tennessee Plaintiffs’ vicarious liability claims against the Saint Thomas Entities based on actual agency fail as a matter of law, and summary judgment should be granted.

<sup>1</sup> Saint Thomas West Hospital, formerly known as St. Thomas Hospital, Saint Thomas Network, and Saint Thomas Health.

<sup>2</sup> The STOPNC Defendants consist of STOPNC, Howell Allen Clinic, John Culclasure, M.D., Debra Schamberg, RN, CNOR, and Vaughan Allen, M.D.

The Tennessee Plaintiffs have also asserted a putative “direct liability” theory for holding the Saint Thomas Entities liable for their injuries. However, Plaintiffs have not alleged and cannot cite a legally cognizable duty under Tennessee law to support such a claim. Moreover, that theory fails on the same basic premise because there is no evidence that the Saint Thomas Entities owed any duty to the Tennessee Plaintiffs with respect to the purchasing or dispensing of methylprednisolone acetate (“MPA”) or had responsibility as to the actions of the STOPNC Defendants that form the basis of their claims. There is therefore no basis for holding the Saint Thomas Entities liable to the Tennessee Plaintiffs under a “direct liability” theory.

For the reasons stated in the contemporaneously filed *Memorandum in Support of their Global Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability* and the *Statement of Undisputed Material Facts*, the Saint Thomas Entities request that the Court: (i) grant summary judgment on Plaintiffs’ actual agency and direct liability claims brought by all of the Tennessee Plaintiffs; and (ii) grant such other and further relief to which the Saint Thomas Entities are entitled.

SAINT THOMAS WEST HOSPITAL,  
FORMERLY KNOWN AS ST. THOMAS  
HOSPITAL, SAINT THOMAS  
NETWORK, AND SAINT THOMAS  
HEALTH

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**CERTIFICATE OF SERVICE**

This certifies that a true and accurate copy of the foregoing was served on all parties of record by virtue of the Court's electronic filing system this 15th day of March, 2016.

/s/ Sarah P. Kelly  
SARAH P. KELLY